IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KIFA MUHAMMAD,

Plaintiff, No. CIV S-02-0006 LKK CMK P

vs.

SAN JOAQUIN COUNTY JAIL, et al.,

Defendants. FINDINGS & RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se in this civil rights action against San Joaquin County Jail, Baxter Dunn, San Joaquin County Sheriff, and Kristen Hamilton[1] for civil rights violations. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302(b)(21).

On January 20, 2006, the undersigned filed findings and recommendations finding that plaintiff had failed to set forth specific facts which show that there is a genuine issue for trial and recommending that defendants' motion for summary judgment be granted. (Doc. 67.) On March 31, 2006, the district court declined to adopt the findings and recommendations and

[1]Also named in plaintiff's amended complaint were Guard—Desoto and Stan Hein, Facility Manager Inmate Case Worker. Desoto and Hein were dismissed from the case, without prejudice, on September 29, 2004. (Doc. 26.)

remanded this matter to the undersigned for further proceedings consistent with the order. (Doc. 70.) Accordingly, the court considers defendants' arguments for summary judgment based on municipal liability and qualified immunity.

I. Background

Plaintiff brings this action alleging violation of his First Amendment right to free exercise of his religious beliefs. Plaintiff was incarcerated at the San Joaquin County Jail at all times relevant to his complaint. Plaintiff is a practicing Muslim and, in keeping with his Islamic faith, observes Ramadan, which requires fasting from sunup to sundown. Ramadan lasts for thirty days. Plaintiff states that he requested jail officials to make accommodations to allow him to eat after sundown during Ramadan in 2001. However, plaintiff alleges that jail officials ignored his request for accommodation and, when they did provide bag meals, did so for only a couple of days. Plaintiff also alleges that jail officials refused to provide Friday services for Muslims.

II. Standard of Review

Summary judgment is appropriate when it is demonstrated that there exists "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Under summary judgment practice, the moving party

> . . . always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). "[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the 'pleadings, depositions, answers to interrogatories, and admissions on file.'" Id. Indeed, summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Id. at 322. "[A] complete failure of proof concerning

an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. In such a circumstance, summary judgment should be granted, "so long as whatever is before the district court demonstrates that the standard for entry of summary judgment, as set forth in Rule 56(c), is satisfied." Id. at 323.

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." T.W. Elec. Serv., 809 F.2d at 631. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee's note on 1963 amendments).

In resolving the summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,

477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted).

On August 1, 2003, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (en banc); Klingele v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

III. Discussion

Plaintiff contends that defendants burdened his free exercise of religion by failing to provide him with bag meals to eat after sundown during Ramadan and by failing to provide Muslim services on Fridays. (Am. Compl. 2-3.) Prisoners have long been understood to retain some measure of the constitutional protection afforded by the First Amendment's Free Exercise Clause. See Pell v. Procunier, 417 U.S. 817, 822 (1974). However, a court must balance the constitutional protections afforded prison inmates, including the right to free exercise of religion, against the interests of prison officials charged with complex duties arising from administration of the penal system. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987). Thus, to state a First Amendment free exercise of religion claim, a prison plaintiff must allege that prison officials burdened his practice of religion by preventing him from conduct mandated by his faith without any justification reasonably related to legitimate penological interests. See Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997).

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Here, there is no dispute as to the sincerity of plaintiff's religious beliefs. The court has found that plaintiff has established a triable issue of material fact as to whether defendants' actions substantially burdened his religious practices.

Defendants argue that any burden their conduct places on plaintiff's religious beliefs is constitutional because defendants' conduct was reasonably related to a legitimate penological interest. Defendants aver that county policies allow volunteer religious leaders to come to the jail, after an approval process, but do not allow inmates to gather together themselves. The county states that the policy of not allowing prisoners to gather together for services is rationally related to the goal of maintaining the jail and that plaintiff had other options to express his beliefs, such as praying in his cell or reading the Koran in the prison library. Defendants' arguments, however, ignore the crux of plaintiff's complaints—that prison officials made no effort to procure the services of a volunteer Muslim Cleric for services and that prison officials refused to provide bag meals for plaintiff to eat after sundown during Ramadan. While the court is mindful that prison regulations are judged under a less restrictive reasonableness standard, the court must also inquire whether prison regulations which restrict inmates' First Amendment Rights operate in a neutral fashion.[2] See Turner v. Safley, 482 U.S 78, 89 (1987). In short, defendants have not shown that the burdens complained of by plaintiff were reasonably related to a legitimate penological interest. See Ward v. Walsh, 1 F.3d 873, 879 (9th Cir. 1993) ("abbrogation of [the right to be provided with food that satisfies the dietary laws of a prisoner's religion] cannot be satisfied by the rote recitation of the O'Lone standard.")

Having concluded that there exists a triable issue of material fact as to whether defendants' conduct burdened plaintiff's First Amendment rights, the court considers defendants' alternative grounds for summary judgment–no municipal liability and qualified immunity from suit.

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[2]Plaintiff asserts in his deposition that Christians and Jewish inmates were getting religious services. (Pl.'s Dep. 58:22-25, 59:1-5.)

Municipal Liability

A municipality is not subject to liability for the constitutional violations of its employees based on respondeat superior, but it is subject to liability for its employees' constitutional violations resulting from official policy, custom, or practice of deliberate indifference to the rights of individuals. See Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). A policy is a choice made by an official with final decision-making authority to follow a course of action from among various alternatives. See Oviatt v. Pearce, 954 F.2d 1470, 1477 (9th Cir. 1992). A policy of inaction may also constitute grounds for suit where the failure "amounts to deliberate indifference to the rights of persons'" impacted by the inaction. Canton v. Harris, 489 U.S. 378, 388 (1989). To establish liability on a local governmental entity for failure to act to preserve constitutional rights in a civil rights suit, a plaintiff must establish: (1) that he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to plaintiff's constitutional right; and (4) that the policy is the moving force behind the constitutional violation. See id. at 389-91. A municipality is deliberately indifferent to a person's constitutional rights when the need for more or different action is obvious and the inadequacy of the action taken so likely to result in the violation of constitutional rights, that the policymakers reasonably can be said to have been deliberately indifferent to the need. See Oviatt, 954 F.2d at 1477-78.

With these principles in mind, the court considers plaintiff's claims against defendant Joaquin County Jail and defendants Dunn and Hamilton, in their official capacities[3] to determine whether plaintiff's alleged constitutional deprivations resulted from official policy, custom, or practice of deliberate indifference to the rights of individuals.

[3]Official capacity suits filed against municipal employees are merely an alternative way of pleading an action against the entity of which the defendant is an officer. See e.g., Hafer v. Melo, 502 U.S. 21, 25 (1991).

Plaintiff has established that he was denied his constitutional right to free exercise of his religious beliefs. See Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997) (free exercise violation established when prisoner shows that defendants burdened the practice of his religion by preventing prisoner from engaging in conduct that was mandated by his faith).

The court must next consider whether plaintiff has demonstrated that the San Joaquin County Jail had a policy which deprived plaintiff of his constitutional rights. A "decision to adopt [a] particular course of action...by th[e] government's authorized decisionmakers...surely represents an act of official governmental 'policy.'" Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)(plurality opinion). In other words, a policy is a deliberate choice to follow a course of action "made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Id. at 483-84.

There is no question that Sheriff Baxter Dunn was the final policy maker with respect to practices in the San Joaquin County Jail.[4] Plaintiff alleges that he had his "mom call and talk to the Sheriff about our problem, but they passed it back down to Sergeant Hamilton and nothing was ever done." (Am. Compl.at 3:19-21.) Plaintiff also claims that "the write ups [he] wrote on staff was never answered." (Id.) Defendant Dunn offers nothing to rebutt plaintiff's statements that Dunn was aware of the problem. Accepting the allegations as true and viewing the facts in a light most favorable to plaintiff, defendant Dunn knew that plaintiff was being denied religious dietary needs during Ramadan and being denied permission to attend services during Ramadan, and he did nothing to remedy the situation. As plaintiff contends that he was denied bag meals and services throughout the entire month of Ramadan, the court finds that defendant Dunn's inaction established an official policy. See e.g., Anela v. Wildwood, 790 F.2d 1063, 1067 (3rd Cir. 1986) (stating that where evidence revealed long-standing condition of shortages of beds in prison and City offered no evidence to rebutt, the condition constituted a

[4]See Brandt v. Board of Supervisors, 84 Cal.App.3d 598 (1978) ("The responsibility for operating jails in this state is placed by law upon the Sheriff.")

custom such that the City could be liable under Monell).

The existence of a policy, without more, is not sufficient to trigger local government liability under 42 U.S.C. § 1983. Canton, 489 U.S. at 388-89. A plaintiff must demonstrate that the official policy evidences a "deliberate indifference" to his constitutional rights. See id. at 389. This occurs when the need for more or different action "is so obvious, and the inadequacy [of the current procedure] so likely to result in the violation of constitutional rights, that the policymakers ··· can reasonably be said to have been deliberately indifferent to the need." Id. at 390, 109 S.Ct. at 1205. Whether a local government entity has displayed a policy of deliberate indifference is generally a question for the jury. See Davis v. Mason County, 927 F.2d 1473, 1482 (9th Cir.), cert. denied,502 U.S. 899 (1991) (overruled on other grounds).

Accordingly, the court finds that whether liability should be imposed on San Joaquin County Jail and defendants Dunn and Hamilton, in their official capacities, cannot be ascertained without the resolution of this factual issue. For this reason, the court finds that summary judgment on the issue of municipal liability is not appropriate.

Qualified Immunity

"[G]overnment officials performing discretionary functions [are entitled to] a qualified immunity, shielding them from civil liability as long as their actions could have reasonably been thought consistent with the rights they are alleged to have violated." See Anderson v. Creighton, 483 U.S. 635, 638 (1987) (citations omitted). The Supreme Court has clarified that the qualified immunity analysis is a three-part inquiry. See Saucier v. Katz, 533 U.S. 194, 201 (2001). First, the court must consider whether the facts taken in a light most favorable to the party asserting the injury show that the defendants violated the plaintiff's constitutional right. See id. Next, the court must determine if the right was clearly established at the time of the alleged violation. See id. Finally, the court must determine whether a reasonable officer in these circumstances would have thought that his or her conduct violated the alleged right. See id.

When identifying the right allegedly violated by defendants, a court must define the right more narrowly than the constitutional provision guaranteeing the right, but more broadly than the factual circumstances surrounding the alleged violation. See Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998). For instance, a statement that the Eighth Amendment guarantees medical care without deliberate indifference to serious medical needs is a narrow statement of the right for conducting the clearly established inquiry. See Kelly v. Borg, 60 F.3d 664, 667 (9th Cir. 1995). In the present case, the court finds that the First Amendment guarantees that plaintiff has the right to freely exercise his religious beliefs and practices. see McElyea v. Babbit, 833 F.2d 196, 197 (9th Cir. 1987)(per curiam), and that defendants Dunn and Hamilton violated that right.

The court's next inquiry is whether defendants violated a clearly established right; if not, then defendants are immune from suit. A constitutional right is clearly established if the contours of the right are sufficiently clear that a reasonable official would understand that what he or she was doing violated that right. See Anderson, 483 U.S. at 640; Act Up/Portland v. Bagley, 988 F.2d 868, 871 (9th Cir. 1993). A particular right may be clearly established for purposes of qualified immunity if the trend of relevant case law indicates that recognition of that specific right is inevitable. See Cleavland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989).

To determine whether there is a clearly established right to have the County provide religious services on Fridays for Muslim inmates who request them " in the absence of binding precedent, a court should look to all available decisional law, including the decision of state courts, other circuits and district courts." Ward v. County of San Diego, 791 F.2d 1329, 1332 (9th Cir. 1986).

Under clearly established law, prison officials are not required to provide special services for every denomination, so long as inmates are afforded a "reasonable opportunity" to worship in accordance with their conscience. See Johnson v. Moore, 948 F.2d 517, 520 (9th Cir. 1991). Prison officials have no affirmative obligations to provide appropriate clergy for inmates.

See Ward v. Walsh, 1 F.3d 873, 880 (9th Cir. 1993) (stating it is well-established that plaintiff's do not have a free exercise right to be provided with religious materials); Reimers v. Oregon, 863 F.2d 630, 631-32 (9th Cir. 1989). Preventing Muslim prisoners from attending religious services does not violate the constitution because the Muslim prisoners were not "deprived of all forms of religious exercise, but instead freely observe a number of their religious observations." O'Lone v. Estate of Shabazz, 482 U.S. 342, 352 (1987).

In light of the above mentioned case law, the court finds that there is no clearly established right for prison officials to provide special religious services for Muslims. Defendants state that Muslim prisoners are afforded a reasonable opportunity to worship in accordance with their beliefs by praying quietly in their cells or by reading a copy of the Koran, which is available in the jail library. As the court finds that there is no clearly established right to provide special services for Muslims, it concludes that defendants Dunn and Hamilton are entitled to qualified immunity on this issue.

The court next considers whether defendants Dunn and Hamilton are entitled to qualified immunity for their alleged conduct of not providing plaintiff bag meals to eat after-sundown during Ramadan.

As stated above, the court finds that defendants conduct violated plaintiff's First Amendment right to freely exercise his religious beliefs. See McElyea, 833 F.2d at 197. The court next considers whether there is a clearly established right to an after-sundown meal during Ramadan for Muslim prisoners who request them.

As mentioned above, a particular right may be established for purposes of qualified immunity if the trend of relevant case law indicates that recognition of that specific right is inevitable. See Ward v. County of San Diego, 791 F.2d at 1332. Under established law, prison authorities must generally accommodate the rights of prisoners to receive a diet consistent with their religious beliefs. See McElyea, 833 F.2d at 198 ("Inmates ··· have the right to be provided food sufficient to sustain them in good health that satisfies the dietary laws of their religion····");

see also 28 C.F.R. §§ 547.20(d), 548.13(a). The right of prisoners to a diet that satisfies their religious beliefs is secure unless the cost of providing the requested diet is "prohibitive" or "administratively unfeasible." See Benjamin v. Coughlin, 905 F.2d 571, 579 (2d Cir.), cert. denied,498 U.S. 951 (1990) (summarizing the test of O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987)). Thus, clearly establishes law requires prison officials to accede to prisoner requests for religious diets absent a legitimate penological justification for their refusal.

In the instant case, no legitimate penological interest has been advanced which would justify the refusal to provide bag meals to eat after sundown during Ramadan to Muslim prisoners who request them. In fact, the record reveals that the San Joaquin County Jail did provide meals to eat after sundown during Ramadan. (Decl. of Kristen Hamilton 2:4-6.) This court therefore finds, as a matter of law, that the law requiring the availability of after-sundown meals during Ramadan to Muslim prisoners who request them is clearly established.[5] As a result, defendants Baxter and Dunn cannot assert qualified immunity based on uncertainty in the law or the law's application to this case.

The court's final inquiry is whether at the time of the challenged conduct, and in light of the information possessed by Hamilton and Dunn, a reasonable official would have understood that Hamilton's and Dunn's actions in failing to ensure that plaintiff was receiving after-sundown meals during Ramadan violated plaintiff's clearly established First Amendment rights. See Anderson, 483 U.S. at 640-41.

In order to ascertain the reasonableness of each defendants conduct, it is first necessary to ascertain whether each defendant has sufficient notice of the alleged violations of plaintiff's constitutional rights so as to create a duty to inquire whether plaintiff's religious

[5]In their motion for summary judgment, defendants assert that there is no "clearly established obligation to provide [plaintiff] with two nighttime meals, and that officers in the shoes of Hamilton and Dunn would not have believed their conduct was [unlawful]." However, plaintiff asserts that he got only two nighttime meals during Ramadan. Therefore, the court's inquiry is not whether it is clearly established that plaintiff was entitled to two nighttime meals, but whether it is clearly established that plaintiff is entitled to a nighttime meal during Ramadan.

dietary needs were being met.

In his amended complaint, plaintiff states that he "had [his] mom call the sheriff about [not getting bag meals], but they passed it back down to Sergeant Hamilton and nothing was ever done." (Am. Compl. 3:19-21.) In his deposition, plaintiff states that his mother called "Sergeant Hamilton about the services were weren't [sic] getting and about the bag meals...." Defendant Dunn, the Sheriff, has not submitted any declaration indicating that plaintiff's mother did not make him aware that plaintiff was being denied after-sundown meals. Plaintiff's statement in his complaint that his mother called and talked to the Sheriff about the bag meals is sufficient to raise a genuine issue of material fact concerning the sufficiency of notice to defendant Dunn that plaintiff's dietary needs were not being met. The objective reasonableness of defendant Dunn's conduct cannot be ascertained without resolution of this factual issue. For this reason, the court finds that summary judgment for defendant Dunn on the affirmative defense of qualified immunity on the issue of whether plaintiff was receiving after-sundown meals is improper.

It is undisputed that defendant Hamilton had sufficient notice of the alleged violation of plaintiff's constitutional rights so as to create a duty to inquire whether plaintiff's religious dietary needs were being met. Plaintiff's complaint and deposition state that plaintiff spoke with defendant Hamilton about the jail's failure to provide bag meals during Ramadan, and defendant Hamilton does not state that she was unaware of plaintiff's ability to secure his religious diet. It is well established that prison officials must accommodate religious dietary needs absent a legitimate penological justification for their refusal. Further, the record establishes that the San Joaquin County Jail had a policy of accommodating the religious dietary needs of prisoners and that defendant Hamilton is in charge of overseeing religious programs and services offered to inmates. (Decl. of Kristen Hamilton 1:22-26.) Accordingly, the court concludes that defendant Hamilton's alleged denial of plaintiff's religious dietary needs was not reasonable. Therefore, the court finds that summary judgment for defendant Hamilton on the affirmative

defense of qualified immunity on the issue of whether plaintiff was receiving after-sundown meals is improper.

IV. Conclusion

Based on the foregoing, IT IS RECOMMENDED that:

1. Defendants' motion for summary judgment on the basis that no municipal liability exists be DENIED;

2. Defendants' motion for summary judgment on the basis of qualified immunity be granted in part and denied in part;

3. Summary judgment on the basis of qualified immunity be GRANTED with respect to plaintiff's claims that defendant Baxter Dunn, in his individual capacity and defendant Kristen Hamilton, in her individual capacity, violated plaintiff's right to freely exercise his religious beliefs by not providing Friday services for Muslims;

4. Summary judgment on the basis of qualified immunity be DENIED with respect to plaintiff's claims that defendant Baxter Dunn, in his individual capacity and defendant Kristen Hamilton, in her individual capacity, violated plaintiff's right to freely exercise his religious beliefs by not providing plaintiff with after-sundown meals during Ramadan; and

5. This action proceed on plaintiff's First Amendment claims against San Joaquin County Jail and defendants Dunn and Hamilton, in their official capacities, and on plaintiff's claim that defendants Dunn and Hamilton, in their individual capacities, violated his First Amendment right to freely exercise his religious beliefs by failing to provide him with after-sundown meals during Ramadan.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the

specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: May 9, 2006.

CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE